



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR FINANCIAL MANAGEMENT
WASHINGTON DC 20420

DEC 19 1997

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street, SW, Room 420
Washington, DC 20227

Dear Ms. Johnson:

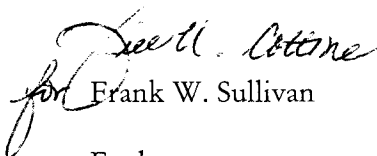
We appreciate the opportunity to comment on the Federal Register notice dated September 16, 1997, Electronic Funds Transfer (EFT) requirements of the Debt Collection Improvement Act of 1996, 31 CFR Part 208 Proposed Rule.

Specific comments and concerns regarding the proposed rule are listed in the enclosure to this letter. These comments and concerns are divided into five areas: (a) issues regarding waivers; (b) remittance information issues; (c) issues not addressed in the proposed final rule; (d) miscellaneous issues; and (e) implementation issues.

Many of the issues concerning the implementation of EFT addressed in the enclosures have been previously discussed in our meetings with the Department of the Treasury's Financial Management Service (FMS) staff. We continue to look forward to working with your staff in resolving all of the issues involved in the Debt Collection Improvement Act.

Should you have any questions, please contact Joyce Moeder at (202) 273-5258, Cash & Debt Management Division (047GC1).

Sincerely,


for Frank W. Sullivan

Enclosure

cc:

D. Mark Catlett, Acting Assistant Secretary for Management (004)
Dennis Kordyak, Associate Deputy Assistant Secretary for Financial Policy (047G)
Rom Mascetti, Deputy Director for Financial Policy (047G)
Ron Dobranski, Director, Cost & Debt Management Service (047GC)
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**VA's Comments on the Electronic Funds Transfer (EFT) Requirements of the Debt
Collection Improvement Act of 1996, 31 CFR Part 208**

Federal Register

Proposed Rule

dated September 16, 1997

A. Issues regarding Waivers:

1. The decision to provide one set of waiver criteria for recipients who have an account with a financial institution and became eligible for a Federal payment before July 26, 1996, and a different set of criteria for those eligible on or after July 26, 1996, poses a difficult administrative situation for paying agencies, while, at the same time, giving the appearance of being unfair. The administrative problem comes from recipients who receive multiple payments from the same agency, one for which they became eligible before July 26, 1996, and the other after. A veteran receiving both compensation and a pension payment, or an individual receiving Social Security and supplemental security income might fall into this category. If the recipient declines to receive payments via EFT because of hardship or disability, the paying agency would have to make the payments arising from the earlier benefit by check and the payments related to the later benefit by EFT. This will be both difficult to administer and cost-inefficient. The paying agency would also find itself in the potentially indefensible position of explaining, from a fairness perspective, why receipt of one payment can be waived because of hardship or disability and the other cannot.
2. Comments received on the interim rule include that "newly eligible recipients do not have a history of receiving their Federal benefit payments by check and, therefore, would not experience a change in the manner in which they receive payment." This statement does not consider the situation where a 'new recipient' may already be receiving other benefit payments from the same or another agency based on a "prior to July 26, 1996," payment eligibility. It also does not consider the fact that, while the new recipient has not been paid by check previously, that payment by EFT might still represent a physical or geographical hardship. The proposed rule should clarify this type of situation when entitlement dates differ.
3. Proposed Section 208.4(c) allows for a waiver if the "political, financial, or communications infrastructure in foreign countries does not support payment by EFT." The proposed rule needs clarification on how this type of determination will be made and who will make it.

VA's Comments on the Electronic Funds Transfer (EFT)

Page 2 of 4

4. Proposed Section 208.4(g) allows a waiver if the payment is non-recurring and the cost of making the payment via electronic funds transfer exceeds the cost of making the payment by check. There are both non-recurring and cost-effectiveness issues that need to be considered.

A. Non-Recurring

The definition of non-recurring as "one payment in a 12-month period" presents a problem for reimbursements to veterans for health costs and for payments to physicians. We do not always know ahead of time how many payments to veterans or physicians will be processed within any specific 12-month period. Veterans and/or physicians might receive only one payment or several payments. Thus, to meet the requirement of the law, all of these payments would have to be processed as EFT. A positive cost-benefit from EFT may not be realized with two or more payments in a 12-month period for such non-recurring payments of this nature. The proposed rule should address this type of circumstance.

B. Cost Effectiveness

The proposed rule states that mandatory EFT can be waived for non-recurring payments when the cost of making the electronic payment exceeds the cost of making the payment by check. It is reasonable to assume that we will encounter situations where EFT is the most economical method of payment delivery; however, payment by check(s) would result in greater overall savings to the agency. For example, a construction contract is open for bid. Company X can complete the job for \$150,000 less than the nearest competitor. The contract stipulates that progress payments will be issued quarterly over the course of the project. Company X does not want EFT. The proposed rule should be changed to include overall savings as a factor for agencies to consider in situations involving non-recurring or limited term payments.

B. Remittance Information Issues:

1. The discussion in the preamble to the proposed rule describes the problem and need for a method to provide complete remittance advice to vendors. As discussed with Treasury staff, remittance data is an extremely important issue for VA. Since this problem must be solved prior to full vendor implementation, the issue also should be formally addressed in the proposed rule.

VA's Comments on the Electronic Funds Transfer (EFT)

Page 3 of 4

C. Issues Not Addressed in the Proposed Final Rule:

The Department of Veterans Affairs has a multitude of small payments. Cash payments for reimbursement to beneficiaries is an integral part of the daily expeditious operation of medical facilities throughout the VA system. VA medical facilities are designated to serve the treatment needs of the eligible veteran population, and the corresponding payments and reimbursements paid to those beneficiaries are the result of mandated entitlements by law. Entitlement payments such as beneficiary travel reimbursements, withdrawals and liquidation of personal funds of patients, and incentive therapy payments are most often paid in cash since same day disbursements are required. Usage of cash in small amounts involving cases of hardship that require same day disbursement, and where other methods of payment are inappropriate, should be addressed in the final rule.

D. Miscellaneous Issues:

1. Proposed section 208.7, Agency Responsibilities, requires clarification on action to be taken if the agency does not receive a response from a recipient. The rule should state what action the agency should take if it has contacted or made every reasonable effort to contact a recipient, especially a benefit recipient, and has not received the recipient's bank information, a certification that the recipient does not have a financial institution, or a waiver request.
2. Similarly, in the discussion of comments on the Interim Rule, there is a note that Treasury is working with agencies to reconcile differences between the Federal Acquisition Regulation (FAR) interim rule and this rule. The FAR interim rule on Payment by Electronic Funds Transfer, published on August 29, 1996, states that bank information can only be obtained from the recipient. The proposed Treasury rule states "an agency must collect from each recipient... the information required to make the payment."
3. Proposed section 208.9, Compliance, states that if an agency fails to make payment by EFT, as prescribed under this part, Treasury may assess a charge to the agency. This should be clarified to the extent that charges will not be assessed on any payments not made by EFT pursuant to any of the authorized waivers found in section 208.4 and revised section 208.7 (see D1 comments above).

VA's Comments on the Electronic Funds Transfer (EFT)
Page 4 of 4

4. The proposed rule also states that this "information can be collected electronically through the ACH system by use of an Automated Enrollment Entry (ENR)". It appears that the EFT information can come through the financial institution when it is originated by the recipient. However, there are situations where it is necessary for EFT information to originate with the financial institution. The most common situation occurs when two financial institutions merge. Through the Federal Reserve System, the merged financial institution can put out changes in bank routing number and bank account number to all paying agencies. These agencies are easily and efficiently able to update the records of all recipients for this institution. If agencies are prevented from accessing this information, it will seriously compromise their ability to make payments timely and accurately.

E. Implementation Issues:

1. It is unclear from the proposed rule whether Treasury will expect agencies to identify on check payments that an EFT waiver has been granted. If so, Treasury needs to provide specifications, documenting the code value or values and the position in the payment record for this. Until they do, no agency will be able to program needed changes to their financial systems. VA, like other payment agencies, will not only need to make computer system modifications to modify the payment record and populate this field, but will need to develop supporting computer logic that will identify which payees are affected by this provision, so that the payment record can be created correctly. VA is going to need an extension to the deadline, for some reasonable period after receiving the specifications from Treasury, to develop and test software to ensure compliance in the event that this provision will be mandated. Discussion of this should be added to the rule. It is unclear from the proposed rule whether Treasury expects agencies to identify unbanked recipients on check payments or provide a database on these recipients. Information like this or any other information needed by Treasury should be identified and provided to agencies as soon as possible.
2. The preamble to the proposed rule states that Treasury will provide agencies with model language for individuals to use when certifying that mandatory EFT would impose a hardship. A timeframe for agency receipt of this information needs to be added to the rule.